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## GUIDE TO LISTING

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### A. APPROVAL FOR LISTING

- The Capital Markets Authority grants approval for listing for all public offers and listing of securities on any securities exchange in Kenya. (Reg 3 (2))
- A Securities Exchange may approve the listing of a security on a Growth Enterprise Market Segment if that security is not offered to the public and the listing is by way of Introduction (Reg 3 (2A)).

### B. IMPORTANT CONSIDERATIONS PRIOR TO LISTING

#### Appointment of Transaction Advisor or a Nominated Advisor.

- Any company proposing to offer its securities to the public or a section of the public is required to appoint a transaction adviser who shall be responsible for ensuring that the offer of securities is made in accordance with the Act and regulations issued thereunder (Reg 5A. (1))
- An issuer seeking to be listed on the Growth Enterprise Market Segment is required to appoint a Nominated Adviser by a written contract and shall ensure that it has a Nominated Adviser at all times. The Nominated Adviser is expected to advise and guide an issuer on the application of listing requirements of Growth Enterprise Market Segment and manage the submission of the listing statement and all other documentation to the Securities Exchange and ensure its completeness and correctness before submission. (Reg 10A. (1))

#### Corporate Governance Considerations

- 1) The company must have at least a third of the Board as nonexecutive directors
- 2) The company should establish an audit committee in compliance with guidelines on corporate governance issued by the Capital Markets Authority
- 3) The Chairman of the company shall not hold such position in more than two listed companies at any one time, in order to ensure effective participation in the board.
- 4) The chief financial officer and the head of accounting department of shall be members of the Institute of Certified Public Accountants established under the Accountants Act

- 5) The company secretary of every issuer shall be a member of the Institute of Certified Public Secretaries of Kenya established under the Certified Public Secretaries of Kenya Act.
- 6) The auditor of the company should be a member of the Institute of Certified Public Accountants and shall comply with the International Standards of Auditing

**Other Pre-Listing Considerations**

1. The company should review the Memorandum and Articles of Association to align them with the guidelines on corporate governance practices by Public Listed Companies in Kenya as set out by the Capital Markets Act.
2. The company should have a company register who will maintain the register of shareholders of the company.
3. The Articles of Association of the company must be amended in order to comply with the Central Depository (Operation) Rules and the Central Depositories Act, 2000 in regards to provisions relating to immobilized securities.

**C. ELIGIBILITY REQUIREMENTS FOR PUBLIC OFFERING OF SHARES AND LISTING**

Requirement	Part A Criteria For The Main Investment Market Segment	Part B Criteria For The Alternative Investment Market Segment	Part C Criteria For The Growth Enterprise Market Segment
<b>Incorporation status</b>	A public company limited by shares and registered under the Companies Act (Cap. 486 of the Laws of Kenya).		
Share capital	Minimum authorized issued and fully paid up ordinary share capital of <b><u>fifty million shillings.</u></b>	Minimum authorized issued and fully paid up ordinary share capital of <b><u>twenty million shillings.</u></b>	The issuer shall have a minimum authorized and fully paid up ordinary share capital of <b><u>ten million shillings;</u></b> and  The issuer must have not less than <b><u>one hundred thousand shares in issue</u></b>
<b>Net assets</b>	Net assets immediately before the public offering or listing of shares should <b><u>not be less</u></b>	Net assets immediately before the public offering or listing of shares should <b><u>not be less</u></b>	NA

	<u>than one hundred million shillings.</u>	<u>than twenty million shillings.</u>	
<b>Free transferability of shares</b>	Shares to be listed shall be <u>freely transferable</u> and not subject to any restrictions on marketability or any preemptive rights.		
<b>Availability and reliability of financial records</b>	<p>The issuer shall have audited financial statements complying with International Financial Reporting Standards (IFRS) for an accounting period ending on a date not more than four months prior to the proposed date of the offer or listing for issuers whose securities are not listed at the securities exchange, and six months for issuers whose securities are listed at the securities exchange.</p> <p>The Issuer must have prepared financial statements for the latest accounting period on a going concern basis and <u>the audit report must not contain any emphasis of matter or qualification in this regard.</u></p>		NA
<b>Competence and suitability of directors and management</b>	<p>At the date of the application, the issuer must <u>not be in breach of any of its loan covenants particularly in regard to the maximum debt capacity.</u></p> <p>As at the date of application and for a period of at least two years prior to the date of the application, no director of the issuer shall have</p> <p><u>Any petition under bankruptcy or insolvency laws in any jurisdiction pending or threatened against any director (for individuals), or</u></p>		<p>The issuer must have a <u>minimum of five directors, with a least a third of the Board as non- executive directors</u></p> <p>As at the date of the application and for a period of at least two years prior to the date of the application-</p> <p>(i) any petition under bankruptcy or insolvency laws in any jurisdiction pending or threatened against any director (for individuals),</p>



	<p>any winding-up petition pending or threatened against it (for corporate bodies</p> <p><u>-any criminal proceedings</u> in which the director was convicted of fraud or any criminal offence, nor be named the subject of pending criminal proceeding, or any other offence or action within or outside Kenya; or</p> <p>been the subject of <u>any ruling of a court</u> of competent jurisdiction or any government body in any jurisdiction, that permanently or temporarily prohibits such director from acting as an investment advisor or as a director or employee of a stockbroker, dealer, or any financial service institution or engaging in any type of business practice or activity in that jurisdiction.</p> <p>The issuer must have suitable senior management with relevant experience for <u>at least one year</u></p>		<p>or any winding-up petition pending or threatened against it (for corporate bodies)</p> <p>(ii) any criminal proceedings in which the director was convicted of fraud or any criminal offence, nor be named the subject of pending criminal proceeding, or any other offence or action within or outside Kenya; or</p> <p>(iii) been the subject of any ruling of a court of competent jurisdiction or any government body in any jurisdiction, that permanently or temporarily prohibits such director from acting as an investment advisor or as a director or employee of a stockbroker, dealer, or any financial service institution or engaging in any type of business practice or activity in that jurisdiction.</p> <p>The directors and senior management of an applicant must collectively have appropriate expertise</p>
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	<p><i><u>prior to the listing, none of whom shall have committed any serious offence in any jurisdiction that may be considered inappropriate for the management of a listed company</u></i></p> <p><i>The issuer shall ensure continued retention of suitably qualified management during listing and <u>no change of management for a period of twelve months following the listing</u> other than for reason of a serious offence that may be considered to affect the integrity or be inappropriate for management of a listed company</i></p> <p><i>The issuer must have <u>at least a third of the Board as non-executive directors.</u></i></p>		<p>and experience for the governance and management of the applicant and its business</p> <p>Details of such expertise and experience must be disclosed in any listing particulars prepared by the applicant.</p> <p>“appropriate expertise and experience shall mean at <u>least one year experience in the applicant’s business, or where the applicant has no previous record, experience in similar line of business”.</u></p> <p><u>One third</u> of the directors must have completed the <u>Directors Induction Programme (DIP) prior to listing</u> and the remainder must complete the same within six months after listing.</p> <p>The issuer shall ensure continued retention of qualified management during listing and no change of management for a period <u>of twelve months following the listing</u> other than for reason of a serious offence that may be considered to affect</p>
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			the integrity or be inappropriate for management of a listed company.
<b>Dividend policy</b>	The issuer must have a clear <b><u>future dividend policy</u></b> .		NA
<b>Track record, profitability and future prospects</b>	The issuer must have declared profits after tax attributable to shareholders in <b><u>at least three of the last five completed accounting periods to the date of the offer</u></b>	The issuer must have been in existence in the same line of business for <b><u>a minimum of two years one of which should reflect a profit with good growth potential</u></b> .	NA
<b>Solvency and adequacy of working capital</b>	The issuer should not be insolvent  The issuer should have adequate working capital.		The issuer should not be insolvent.  The issuer should have adequate working capital.  The Directors of the Issuer shall give an opinion on the adequacy of working capital for at least twelve months immediately following the share offering, and the auditors of the issuer shall confirm in writing the adequacy of that capital.
<b>Share ownership structure</b>	Following the public share offering or immediately prior to listing in the case of an introduction, <b><u>at</u></b>	Following the public share offering or immediately prior to listing in the case of an introduction, <b><u>at</u></b>	The Issuer must ensure at least fifteen per cent of the issued shares (excluding those held by a



	<p><u>least twenty five per centum of the shares must be held by not less than one thousand shareholders excluding employees of the issuer.</u></p> <p>In the case of a listing by introduction, the issuer shall ensure that the existing shareholders, associated persons or such other group of <u>controlling shareholders who have influence over management</u> shall give an undertaking not to sell their shareholding before the expiry of a period <u>of twenty four months following listing</u> and such undertaking shall be disclosed in the Information Memorandum</p>	<p><u>least twenty per centum of the shares must be held by not less than one hundred shareholders</u> excluding employees of the issuer or family members of the controlling shareholders.</p> <p>No investor shall hold more than <u>three per centum of the twenty per centum shareholding</u></p> <p>The issuer must ensure that the existing shareholders, associated persons or such other group of <u>controlling shareholders who have influence over management</u> shall give an undertaking to the Authority not to sell their shareholding before the expiry of a period <u>of twenty four months following listing</u> and such undertaking shall be disclosed in the Information Memorandum.</p>	<p>controlling shareholder or people associated or acting in concert with him; or the Company's Senior Managers) are available for trade by the public</p> <p>An issuer shall cease to be eligible for listing upon the expiry of three months of the listing date, if the securities available for trade by the public are held by less than twenty-five shareholders (excluding those held by a controlling shareholder or people associated or acting in concert with him, or the Company's Senior Managers.)</p> <p>The issuer must ensure that the existing shareholders, associated persons or such other group of <u>controlling shareholders who have influence over management</u> shall give an undertaking in terms agreeable to the Authority and the Securities Exchange restricting the sale of part or the whole of their shareholding <u>before the expiry of a period of twenty four months following</u></p>
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			<i>listing</i> and such undertaking shall be disclosed in the listing statement.
<b>Listed shares to be immobilized.</b>	NA	NA	All issued shares must be deposited at a central depository established under the Central Depositories Act, 2000 (No. 4 of 2000).
<b>Nominated Advisor</b>	NA	NA	The issuer must appoint a Nominated Advisor in terms of a written contract and must ensure that it has a Nominated Advisor at all times.

**D. OTHER LISTING INFORMATION (APPLICABLE TO ALL MARKET SEGMENTS)**

- 1) Identity of directors, senior management and advisers (i.e. persons responsible for the information disclosed)
- 2) Offer statistics and expected timetable
- 3) Information on the issuer
- 4) Operating and financial review and prospectus (the recent development and prospects of the group)
- 5) Directors and employees
- 6) Major shareholders and related party transactions
- 7) Financial information
- 8) The offer and listing
- 9) Vendors

Exceptions

These Regulations shall not apply to ó

(a) securities issued by or on behalf of the Government of Kenya or a body corporate established under any written law in Kenya other than the Companies Act; and

(b) *private offers*.

Meaning of private offers



For purposes of these Regulations, an offer of securities shall be regarded as private offer and accordingly shall be deemed not to be an offer to the public in Kenya if, to the extent that the offer is made to persons in Kenya under the following conditions ( Reg 21.(1))

- the securities are offered to not more than one hundred persons;
- the securities are offered to the members of a club or association (whether or not incorporated) and the members can reasonably be regarded as having a common interest with each other and with the club or association in the affairs of the club or association and in what is to be done with the proceeds of the offer;
- the securities are offered to a restricted circle of persons whom the offeror reasonably believes to be sufficiently knowledgeable to understand the risks involved in accepting the offer;
- the securities are of a private company and are offered by that company to-
  - (i) members or employees of the company;
  - (ii) members of the families of any such members or employees; or
  - (iii) the securities are offered to a restricted circle of persons whom the offeror reasonably believes to be sufficiently knowledgeable to understand the risks involved in accepting the offer; and
  - (iv) the minimum subscription for securities per applicant is not less than Kenya Shillings one hundred thousand (Kshs. 100,000);.

***the members of a person's family are the person's husband or wife, widow or widower and children (including stepchildren) and their descendants, and any trustee (acting in his capacity as such) of a trust the principal beneficiary of which is the person himself or herself, or any of those relatives***

#### **E. CONTINUING OBLIGATIONS.**

Every issuer whose securities have been offered to the public shall comply with the continuing obligations specified in the Fifth Schedule with respect to the relevant market segment (Reg 19. (1))

In relation to the continuing obligation to disclose information, an issuer shall make immediate public disclosure of information which might reasonably be expected to have a material effect on market activity in the prices of, its securities (Reg 19 (2))

The information required to be disclosed under these Regulations shall be disclosed within twenty-four hours of the event, simultaneously to the Authority, the securities exchange at which the issuer's securities are listed, if applicable, and to the public during non-trading hours of the relevant market segment (Reg 19 (3))

**F. POLICY AND TAX INCENTIVES FOR THE CAPITAL MARKETS**

- 1) Abolition of Stamp Duty payable on the share capital or increase in share capital of a company listed on the Nairobi Stock Exchange **(2007)**.
- 2) The legal costs and other incidental costs relating to the introduction of shares (when a company lists its share without raising capital) is corporate tax deductible. **(2006)**
- 3) Effective 1 January 2003, newly listed companies pay a lower corporation tax of 25% (i.e. 5 percentage points lower than the standard corporation tax of 30%) for a period of 5 years following their listing. The new legislation applies to companies with who float at least 30% of their issued share capital to the public. **(2002)**
- 4) New and expanded share capital by listed companies or those seeking listing exempt from stamp duty **(2000/2001)**
- 5) Reduction of withholding tax applicable to dividend income arising from investment on listed securities for both local and foreign investors. Foreign 10%; Local 10% to 7.5% to **5%. (1995/96/97)**
- 6) Exemption of stamp duty and value added tax on the transfer of listed securities **(1995)**
- 7) Costs of IPOs were made tax deductible **(1995)**